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Via electronic submittal

RE: Comments on Emergency Amendment and Permanent Adoption of the Emergency Vehicle Emissions Regulations

Chair Sanchez and Members of the California Air Resources Board:

On behalf of the Center for Biological Diversity, Natural Resources Defense Council, Environmental Defense Fund, Clean Air Task Force, the Sierra Club, and Earthjustice, we respectfully submit the following comments in support of the California Air Resources Board's (CARB) Permanent Adoption of the Emergency Vehicle Emissions Regulations (EVE Regulations).

I. Introduction

Confirming California's continuous state-based authority to regulate the emissions from new motor vehicles, including the ongoing practice of certifying manufacturers' new motor vehicles for sale in California, is critical in light of the state's duty and legal obligations to protect public health and welfare from the effects of emissions from all mobile sources. Despite federal government retreats—such as the Congressional Review Act resolutions and the Environmental Protection Agency's (EPA's) proposal to roll back emission standards for new motor vehicles—the Clean Air Act remains unchanged in its acknowledgement of the serious air pollution problems in California and the requirement on EPA to waive preemption created by the Clean Air Act unless it can be demonstrated that California does not meet specified criteria. Once California receives a waiver for a new motor vehicle emission regulation, it may continue its long-standing practice of requiring manufacturers to certify that their vehicles sold in the state meet the regulation. This continuous regulatory certainty serves all interested parties.

Determining which entity has the authority to certify new motor vehicles for sale in California is critically important as the federal government retreats from its duty to protect people and the environment from the effects of mobile source emissions. The answer to that question is straightforward. The Clean Air Act explicitly allows California to address the "harsh reality" of its air pollution problem by promulgating its own vehicle emissions regulations "with

a minimum of federal oversight."[1] Once California receives a waiver for a vehicle regulation, it may require that manufacturers certify that their vehicles sold in the state meet that regulation.[2]

This answer is not changed by Congress's attempt to disapprove preemption waivers for California's most recent iteration of new motor vehicle emission regulations using the Congressional Review Act. That is, even if California's most recent vehicle regulations are no longer enforceable—a fact currently disputed in litigation—California's prior vehicle regulations remain in full force. CARB's proposal in this rulemaking merely affirms this fact.

A. California faces unique air pollution problems from mobile sources.

While California has made great strides in addressing pollution by regulating motor vehicles,[3] California still has a serious air pollution problem.[4] Six of the ten cities in the U.S. most polluted by daily particulate matter (PM) are in California, as are five of the ten most polluted by year-round PM and five of the ten most polluted by ozone.[5] Over half of Californians still live in areas that exceed the most stringent ozone standards, and a "disproportionate number of those most impacted by high ozone levels live in low-income and disadvantaged communities that also typically experience greater exposure to diesel exhaust and other toxic air pollutants compared to surrounding areas."[6] California is the only state in the country with "extreme" ozone nonattainment areas, the most serious category for criteria pollutant standards under the Clean Air Act.[7] Several heavily populated areas in California experience the most ozone and

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[1] *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1078–79 (9th Cir. 2013) (quoting *Ford Motor Co. v. EPA,* 606 F.2d 1293, 1297 (D.C. Cir. 1979)). *See also* H.R. Rep. No. 90-728 at 96-97 (1967); S. Rep. No. 90-403 at 33 (1967).

[2] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York State Dep't of Env't Conservation*, 17 F.3d 521, 526–27 (2d Cir. 1994).

[3] *See* CARB, Appendix G: Supplement to Initial Statement of Reasons (SISOR) – Proposed Emergency Vehicle Emissions Regulations (Sept. 23, 2025) (hereinafter, "Appendix G").

[4] *See, e.g.*, Cromar et al., *Excess Morbidity and Mortality Associated with Air Pollution above American Thoracic Society Recommended Standards, 2017-2019*, Annals ATS Volume 19 Number 4 (Apr. 2022) at 606 ("California far exceeds all others in air pollution-related health impacts exceeding ATS recommendations, with 44% of the nation's total excess deaths (47% of PM2.5 mortality and 36% of O3 mortality").

[5] American Lung Association, State of the Air 2025 at 15, 18, 20, https://www.lung.org/getmedia/5d8035e5-4e86-4205-b408-865550860783/State-of-the-Air-2025.pdf.

[6] CARB, *2022 State Strategy for the State Implementation Plan* at 1-2 (Sept. 22, 2022) (hereinafter, "2022 State Strategy").

[7] EPA, Current Nonattainment Counties for All Criteria Pollutants, https://www3.epa.gov/airquality/greenbook/ancl.html (data current as of September 30, 2025); *see also* Appendix G.

particulate matter pollution in the country.[8] In the South Coast air basin, for example, meeting national ozone standards will require reducing emissions by over 80 percent from 2018 levels.[9]

To address this air quality crisis, California needs vehicle emissions regulations. California's transportation sector accounts for nearly 80 percent of nitrogen oxide (NOx) pollution and 90 percent of PM pollution.[10] NOx "reacts with other chemicals in the air to form both particulate matter and ozone."[11] California's vehicle regulations are thus critical parts of the state's plans to reach attainment of national ambient air quality standards.[12]

Moreover, the transportation sector remains the largest source of greenhouse gas pollution in California.[13] These emissions contribute to climate change, which has extraordinary impacts in California. The Fifth National Climate Assessment details the inordinate impact climate change takes on California, from wildfires ("[o]f the 50 largest US wildfires in 2020, 22 occurred in California, and the 7 largest wildfires recorded in California have occurred since 2018") to drought ("The Central Valley aquifer of California is one of the most stressed aquifers in the world").[14] California needs its vehicle regulations to lessen its contribution to climate change and therefore reduce the harms of climate change on the state.

B. The Clean Air Act established a "two-car" system that benefits the entire country.

California began regulating emissions from motor vehicles in 1946, establishing statewide vehicle emissions standards in 1959 and vehicle certification procedures in 1960.[15] In contrast, "[n]o federal statute purported to regulate emissions from motor vehicles until 1965, when Congress enacted the Motor Vehicle Air Pollution Control Act."[16] Indeed, the Senate

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[8] *See* EPA, Green Book, 8-Hour Ozone (2015) Nonattainment Areas (data current as of September 30, 2025) https://www3.epa.gov/airquality/greenbook/jnc.html; EPA, Green Book, PM-2.5 (2012) Nonattainment Areas (data current as of September 30, 2025) https://www3.epa.gov/airquality/greenbook/knc.html.

[9] 2022 State Strategy at 2, https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf.

[10] California Energy Commission, *Transforming Transportation*, https://www.energy.ca.gov/about/core-responsibility-fact-sheets/transforming-transportation.

[11] EPA, "Basic Information about NO2", https://www.epa.gov/no2-pollution/basic-information-about-no2.

[12] *See* 2022 State Strategy.

[13] *See* CARB, "California Greenhouse Gas Emissions from 2000 to 2022: Trends of Emissions and Other Indicators," at 12 (Sept. 20, 2024) https://ww2.arb.ca.gov/sites/default/files/2024-09/nc-2000_2022_ghg_inventory_trends.pdf.

[14] Fifth National Climate Assessment, Chapter 28. Southwest (2023).

[15] *Motor & Equip. Mfrs. Ass'n, Inc. v. E.P.A.*, 627 F.2d 1095, 1109 n.26 (D.C. Cir. 1979) ("*MEMA*").

[16] *Id.* at 1108.

Report on this Act noted that California "leads in the establishment of standards for regulation of automotive pollutant emissions."[17]

Recognizing the value of California's leadership on mobile source standards, the Clean Air Act created a structure that allows California to continue promulgating its own mobile source regulations. Section 209(b) of the Clean Air Act provides that EPA "shall" waive preemption for California's motor vehicle standards if California determines that its standards "will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."[18] In this way, Congress intentionally created a system where motor vehicles "must be either 'federal cars' designed to meet EPA's standards or 'California cars' designed to meet California's standards."[19] The Clean Air Act thus allowed California to "act as a kind of laboratory for innovation" for the rest of the country and "expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program."[20]

And Congress affirmed the importance of California's regulations in the 1977 Clean Air Act Amendments. First, the amendments expanded California's flexibility under the waiver provision.[21] The House Committee Report explained that the amendment was "intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, i.e., to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare."[22] Additionally, the 1977 amendments allowed other states to "opt in" to California's standards,[23] which furthered the goal of spreading the benefits of California's leadership in vehicle regulations to the entire country.

C. California has certification authority.

The Clean Air Act provision recognizing California's authority to adopt its own mobile source standards also acknowledges California's role in requiring manufacturers to certify that vehicles sold in the state comply with those standards. While the Act preempts most states from "requir[ing] certification" of new motor vehicles to emissions standards prior to sale,[24] it waives

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[17] S. Rep. No. 192, 89th Cong., 1st Sess. 5 (1965), cited in *Motor and Equipment Manufacturers Ass'n* v. *EPA (MEMA I),* 627 F.2d 1095, 1109 (D.C. Cir. 1979).
[18] 42 U.S.C. § 7543(b)(1).
[19] *Engine Mfrs. Ass'n v. U.S. E.P.A.*, 88 F.3d 1075, 1080 (D.C. Cir. 1996). *See also id.* ("Rather than being faced with 51 different standards, as they had feared, or with only one, as they had sought, manufacturers must cope with two regulatory standards under the legislative compromise embodied in § 209(a)."); *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1079 (9th Cir. 2013) ("California's role as a leader in developing air-quality standards has been explicitly endorsed by Congress in the face of warnings about a fragmented national market.").
[20] *MEMA*, 627 F.2d at 1111.
[21] *Id*. at 1110.
[22] H.R. Rep. No. 294, 95th Cong., 1st Sess. 301-02 (1977), cited in *Motor and Equipment Manufacturers Ass'n* v. *EPA (MEMA I),* 627 F.2d 1095, 1122 (D.C. Cir. 1979).
[23] *See* 42 U.S.C. § 7507.
[24] 42 U.S.C. § 7543(a).

this prohibition for California. The waiver provision provides that EPA, upon making the required findings, shall "waive application *of this section*" to California (including the prohibition of certification requirements).[25] And additional restrictions on certification in section 209 "shall not apply in the case of a State with respect to which a waiver is in effect."[26] So, once California receives a waiver to enforce its vehicle emissions standards, California has certification authority.[27] That is, the "effect of the Clean Air Act is that motor vehicles manufactured for sale in the United States must be either "federal cars"—certified to meet federal vehicle emission standards as set by the EPA—or "California cars"—certified to meet that state's standards."[28]

California has a comprehensive vehicle certification process under which it "evaluates the emission control systems of new vehicles, engines, and evaporative emission control systems produced for California," and "issues an Executive Order certifying the vehicle/engine/evaporative emission control system as compliant with California's emissions requirements."[29]

D. California's vehicle regulations.

In 2013, EPA granted a waiver for California's Advanced Clean Cars I (ACC I) regulation.[30] The ACC I package contained three sets of motor vehicle standards: revisions to California's Low Emissions Vehicles III (LEV III) standards for both criteria pollutant and greenhouse gas emissions, as well as revisions to its Zero Emission Vehicle (ZEV) program.[31] This package set out requirements for passenger cars, light-duty trucks, medium-duty passenger vehicles, and limited requirements for heavy-duty vehicles. Additionally, EPA granted a slew of waivers for California's medium- and heavy-duty engine and vehicle regulations, including diesel and Otto-cycle engine standards,[32] amendments to medium- and heavy-duty vehicle emission standards,[33] and on-board diagnostic (OBD) requirements for light-, medium-, and heavy-duty vehicles.[34] With these waivers, California also maintained authority to certify vehicles to its standards. All the waivers mentioned in this paragraph are in effect today.

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[25] *Id*. § 7543(b)(1) (emphasis added).
[26] *Id.* § 7543(c).
[27] *See* Cal. Health & Saf. Code §§ 43102, 43104, 43105 (empowering California to certify new motor vehicles meet emissions standards before they can be sold in the state).
[28] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York State Dep't of Env't Conservation*, 17 F.3d 521, 526–27 (2d Cir. 1994).
[29] CARB, New Vehicle and Engine Certification, https://ww2.arb.ca.gov/our-work/programs/new-vehicle-and-engine-certification/about.
[30] 78 Fed. Reg. 2113 (Jan. 9, 2013). EPA attempted to withdraw the waiver in 2019 but reinstated it in 2022. *See* 87 Fed. Reg. 14332 (Mar. 14, 2022).
[31] 78 Fed. Reg. 2114.
[32] *See* 70 Fed. Reg. 50322 (Aug. 26, 2005); 75 Fed. Reg. 70238 (Nov. 17, 2010).
[33] *See* 82 Fed. Reg. 4867 (Jan. 17, 2017).
[34] 81 Fed. Reg. 78149 (Nov. 7, 2016).

More recently, California adopted three regulations to update and strengthen its prior regulations. First, the Advanced Clean Cars II regulation (ACC II) extended and gradually strengthened California's previous ZEV requirements for passenger vehicles and light-duty trucks.[35] ACC II also set more stringent emissions standards for fine particulate matter and NOx (known as Low Emission Vehicles IV or LEV IV) for model year (MY) 2026 and subsequent MYs.[36] Second, the Advanced Clean Trucks rule (ACT) required manufacturers to produce and sell increasing quantities of medium- and heavy-duty ZEVs and near ZEVs, based on increasingly higher percentages of annual sales, beginning in MY 2024.[37] Third, California's Omnibus Low NOx (Omnibus) regulation required manufacturers of medium- and heavy-duty trucks to reduce smog-forming emissions (NOx and PM) beginning in MY 2024.[38] Both Omnibus and ACC II included OBD requirements. EPA granted California waivers of preemption for all three regulations (for ACT in April 2023, and for ACC II and Omnibus in January 2025).[39]

E. Congressional Review Act resolutions and their aftermath.

On February 14, 2025, EPA announced that it was transmitting waivers for ACT, ACC II, and Omnibus to Congress, purportedly in accordance with the Congressional Review Act (CRA).[40] Under the Congressional Review Act, a federal agency promulgating a "rule" must submit that rule to Congress and the Government Accountability Office (GAO),[41] and Congress has 60 session days from the agency's submission to adopt a resolution to disapprove that "rule."[42] If Congress disapproves a "rule" under the Congressional Review Act, "a new rule that is substantially the same … may not be issued, unless [it] is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule."[43]

Despite precedent that EPA waivers were not "rules" that could be disapproved under the Congressional Review Act,[44] Congress purported to disapprove these three waivers on May 22, 2025.[45] The Congressional Review Act resolutions did not address any of California's earlier

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[35] Cal. Code Regs., tit. 13, § 1962.4(c), (e)(1)(C).
[36] Cal. Code Regs., tit. 13, § 1961.4.
[37] Cal. Code Regs., tit. 13, § 1963.1(b).
[38] Cal. Code Regs., tit. 13, § 1956.8.
[39] *See* 88 Fed. Reg. 20688 (Apr. 6, 2023); 90 Fed. Reg. 642 (Jan. 6, 2025); 90 Fed. Reg. 643 (Jan. 6, 2025).
[40] EPA, *Trump EPA to Transmit California Waivers to Congress in Accordance with Statutory Reporting Requirements* (Feb. 14, 2025), available at https://www.epa.gov/newsreleases/trump-epa-transmit-california-waivers-congress-accordance-statutory-reporting.
[41] 5 U.S.C. § 801.
[42] 5 U.S.C. § 802(a).
[43] 5 U.S.C. § 801(b)(2).
[44] *See Cong. Requesters the Honorable Sheldon Whitehouse the Honorable Alex Padilla the Honorable Adam B. Schiff*, B-337179 (Mar. 6, 2025); *Matter of: Env't Prot. Agency--Applicability of the Cong. Rev. Act to Notice of Decision on Clean Air Act Waiver of Preemption*, B-334309 (Nov. 30, 2023).
[45] H.J. Res. 87, 88, 89 (119th Congress).

waivers for ACC I or medium- and heavy-duty programs. President Trump signed the resolutions on June 12, 2025. On the same day, California and ten other states filed a lawsuit challenging the resolutions.[46]

F. CARB's proposed regulation.

Congress's novel and illegal use of the Congressional Review Act to disapprove EPA's waivers introduced "unprecedented uncertainty. . . into the California market for new motor vehicles and engines."[47] Attempting to address this uncertainty, CARB issued a Manufacturers Advisory Correspondence (MAC) on August 25, 2025, to clarify its certification processes. The MAC explained that manufacturers can obtain California certifications for MY25 and subsequent model years through one of three pathways: (1) complying with California regulations covered by the waivers targeted by the Congressional Review Act resolutions; (2) complying with California regulations that immediately preceded those covered by waivers targeted by those congressional resolutions; or, (3) submitting proof of certification to EPA's motor vehicle emissions standards.[48]

Adding to the uncertainty created by the Congressional Review Act resolutions, vehicle manufacturers now argue that CARB cannot require certification to its earlier standards. Manufacturers argue that CARB's certification requirements for earlier rules for which California received waivers that were *not* disapproved under the Congressional Review Act are invalid because those earlier regulations were displaced by the more stringent standards that were subsequently disapproved under the Congressional Review Act.[49] Manufacturers argue that California is required to amend state law if it wants to revive earlier-adopted vehicle regulations.

While California disagrees with these arguments, CARB initially adopted the EVE Regulations through an emergency rulemaking (hereinafter, emergency regulation) to clarify that its prior mobile source regulations remain intact and that California retains the authority to certify vehicles sold in-state to those prior standards. CARB cited the uncertainty created by the Congressional Review Act resolutions and the need to "maintain a stable vehicle market in the state and prevent the sale of vehicles into the state that would not be certified to *either* set of standards—*neither* the more recent ones that are subject to the recent congressional action *nor* the earlier-adopted ones that are undisputedly authorized by a federal waiver."[50]

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[46] *See State of California, et al., v. United States of America, et al.,* (ND Cal., case no. 3:25-cv-04966).
[47] Appendix G at 6.
[48] *See* Regulatory Guidance for Engine and Vehicle Certification in California dated August 25, 2025, https://ww2.arb.ca.gov/sites/default/files/2025-08/MAC%20ECCD-2025-08.pdf
[49] Pl. Mot. For Leave to File Reply in Support of Mot. For Admin. Relief to Expedite, *Daimler Truck North Am. LLC v. CARB*, Case No. 2:25-cv-02255-DC (Sep. 4, 2025), at Exh. 1, page 2 n.3.
[50] 5-Day Public Notice and Comment Period, Emergency Amendment and Adoption of Vehicle Emissions Regulations at 2 (Sept. 15, 2025), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/emergencyvehemissions/notice.pdf (hereinafter, "5-Day Public Notice").

The emergency regulation thus "clarif[ied] that the criteria pollution provisions of the LEV III regulation (adopted as part of ACC I) and associated on-board diagnostic requirements remain operative," as well as the medium- and heavy-duty "provisions antecedent to Omnibus."[51] CARB also confirmed that it would continue to accept certifications to the LEV IV and Omnibus regulations and that regulated parties could choose to certify to these standards or earlier standards.[52]

CARB now proposes to permanently adopt the EVE Regulations through this present rulemaking process.[53] Like the emergency regulation, this proposal merely confirms that "earlier regulations . . . remain operative."[54] In addition to creating certainty in the California vehicle market, confirming that these regulations remain in place is necessary for California to meet health-based national ambient air quality standards, as the heavy-duty pre-Omnibus regulations and the LEV III criteria emissions regulations are both a part of California's approved State Implementation Plan.[55]

II. The EVE Regulations merely clarify that previously-promulgated standards that had already received a waiver remain in effect.

In its proposal to permanently adopt the EVE Regulations, CARB describes the previous EPA actions that waived preemption for the provisions that now remain operative.[56] As CARB explains, "[t]his proposal will ensure that new vehicles and engines sold in California will, at a minimum, meet the earlier-adopted emission standards and requirements, which have extant federal preemption waivers not subject to the recent congressional resolutions."[57] Because CARB's explicit intention is to clarify the continuing effect of provisions that were previously waived, its proposed regulation does not need a new waiver.

In light of the unprecedented, illegal Congressional Review Act actions, it was lawful and entirely reasonable for CARB to issue the emergency regulation, and now permanently adopt the EVE Regulations, to clarify that the emissions standards for light and heavy-duty vehicles in place prior to ACC II and Low NOx Omnibus remain operative during the pendency of litigation about the waivers subject to the CRA resolutions. Indeed, case law suggests by analogy that it is unreasonable for manufacturers to believe that congressional resolutions on some EPA waivers means that CARB would not be able to enforce any mobile source regulations at all. For example, the Ninth Circuit in *California ex rel. Lockyer* held that generally, "[t]he effect of

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[51] 5-Day Public Notice at 6.
[52] *Id*.
[53] Notice of Public Hearing to Consider Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations (Sept. 23, 2025), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/orhdlcfs/notice.pdf.
[54] *Id*. at 7.
[55] Appendix G at 7.
[56] *See id.* at 6-7, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/orhdlcfs/app_g.pdf.
[57] CARB, SISOR at 10.

invalidating an agency rule is to reinstate the rule previously in force."[58] Moreover, when rules have been rescinded under the Congressional Review Act, agencies have reinstated an earlier version of the same rule without issue.[59] The manufacturers, who themselves lobbied EPA and Congress to disapprove California's programs, know very well that states have obligations to protect their residents and meet federal air quality standards. Absent application of prior standards here, California and the Section 177 states that opted into the standards would have less stringent standards for MY 2026, which would jeopardize their attainment progress and compliance with federal and state law, and reduce protections for millions of people in those states.

CARB may continue to enforce any standards that previously received an EPA waiver—including the criteria pollution provisions of LEV III and the provisions antecedent to Omnibus for subsequent model years. Under Clean Air Act section 209(b), EPA must waive preemption for California standards following a notice and comment proceeding unless it makes one of three statutory findings. In this case, EPA waived preemption for each of the relevant standards.

Nothing in the statute limits the duration of such waivers; EPA expressly waived preemption of the standards for all subsequent model years, and EPA has not later withdrawn or otherwise reconsidered the relevant waivers. As such, the waivers remain extant, and CARB may continue to enforce the relevant standards.

Additionally, many LEV III and pre-Omnibus provisions remain part of the California State Implementation Plan (SIP), reflecting their continued enforceability under both state and federal law. Finally, CARB's adoption of ACC II and Omnibus did not limit the scope of prior waivers, despite what adverse comments on the emergency regulation may claim.[60]

A. Previous waivers for LEV III and pre-Omnibus provisions extend to subsequent model years.

Under the Clean Air Act, EPA is obligated to grant a preemption waiver for the entire CARB program unless it makes discrete statutory findings that such a waiver cannot be granted in whole or in part.[61] The Act imposes no expiration date on such waivers. While the Act contemplates CARB's ongoing development of motor vehicle emission standards and its ability

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[58] *California ex rel. Lockyer v. Dep't of Agric.*, 575 F.3d 999, 1020 (9th Cir. 2009) (cleaned up). The same rule applies under federal law. *See*, *e.g.*, V.I. Tel. Corp. v. FCC, 444 F.3d 666, 671–72 (D.C. Cir. 2006); *Envtl. Def. v. Leavitt*, 329 F. Supp. 2d 55, 64 (D.D.C. 2004).

[59] *Ohio Telecom Ass'n v. Fed. Commc'ns Comm'n,* 150 F.4th 694, 705 (6th Cir. 2025) ("The FCC accordingly rescinded the 2016 Order, including the amended data breach reporting rules, and reinstated the 2007 version of the rules.").

[60] *See* EPA Comment at 2. *See also* EMA Comment at 5; Daimler Comment at 2; International Comment at 2. All comments on the emergency rulemaking are available on the CARB website, https://carb.commentinput.com/comment/extra?id=ZRikSgb6N.

[61] 42 U.S.C. § 7543(b); *see also* 78 Fed. Reg. 2115 ("The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made.").

to obtain new preemption waivers over time, nothing in the Act suggests that obtaining a new waiver automatically abrogates the effect of a prior waiver. Nor can such a restriction be implied given the statutory intent to "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare."[62] And while EPA may have authority to grant only a partial waiver for certain provisions or model years based on its statutory findings, EPA chose to grant full waivers for the relevant aspects of the LEV III and pre-Omnibus programs.[63]

For example, EPA waived preemption for the LEV III program as part of its ACC I waiver.[64] As EPA recently explained in a filing before the United States Supreme Court, this waiver extended to the "entire" ACC I program without limitation as to specific model years.

> . . . EPA's 2013 waiver does not expire after model-year 2025. As noted above, in 2013, EPA found "that the entire ACC program met the criteria for a waiver of Clean Air Act preemption and thus granted a waiver for California's ACC program." And although the 2022 reinstatement decision referenced requirements applicable through model-year 2025, it also noted that, "in 2013, EPA granted California's waiver request for the state's ACC program," and that the "result" of the 2022 action was "the reinstatement of the ACC program waiver." As originally constructed, the ACC program increased in stringency only through model-year 2025 but still remained in effect thereafter . . . . Thus, because EPA's 2013 waiver applied to the ACC, and the ACC does not fully terminate with model year 2025, the waiver likewise does not terminate with model-year 2025.[65]

The same is true for CARB's pre-Omnibus heavy-duty provisions.[66] In its 2017 heavy-duty waiver action, EPA explained that:

> On August 19, 2005, EPA granted California a waiver of preemption . . . for CARB's amendments to its heavy-duty diesel engine standards for *2007 and subsequent model year (MY)* vehicles and engines and related test procedures . . . . In 2010 EPA granted California a waiver of preemption for CARB's adoption of amendments applicable to *2008 and subsequent MY* heavy-duty Otto-cycle engines.[67]

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[62] 78 Fed. Reg. 2116 (citing *Motor and Equipment Manufacturers Ass'n* v. *EPA (MEMA I),* 627 F.2d 1095, 1110 (D.C. Cir. 1979) (in turn citing H.R. Rep. No 294, 95 Cong., 1st Sess. 301-02 (1977)).

[63] In some cases, EPA has in fact made such explicit findings to deny a waiver in part. See, e.g., 90 Fed. Reg. at 1998 ("partially grant[ing]" authorization for CARB's commercial harbor craft program); *id*. at 1999-2000 (explaining in detail the specific program elements for which EPA did not grant a waiver).

[64] *See* 78 Fed. Reg. 2112.

[65] *Diamond Alternative Energy v. EPA,* U.S. No. 24-7, Br. Fed. Respon. in Opp. 12-13 (citing 78 Fed. Reg. 2113, 87 FR 14332, 14367) (cleaned up).

[66] *See* CARB, SISOR at 6-7 (listing prior heavy-duty waivers).

[67] 82 Fed. Reg. 4868 (citing 70 Fed. Reg. 50322 (Aug. 26, 2005) and 75 Fed. Reg. 70237 (Nov. 17, 2010)) (emphasis added).

Accordingly, EPA's prior waiver decisions for the LEV III and pre-Omnibus programs remain in full force and effect for all subsequent model years.

B. State Implementation Plans confirm the continuing vitality of the LEV III and pre-Omnibus waivers going forward.

Consistent with the scope of the original waivers for LEV III and pre-Omnibus provisions, EPA's later SIP actions confirm their applicability in subsequent model years. Various EPA actions incorporate these provisions into the SIPs of California and certain other states that have adopted California's mobile source programs via Clean Air Act section 177. These SIP approvals reflect EPA's judgment that the state has provided "necessary assurances," and that the state has "adequate . . . authority under State . . . law" and "is not prohibited by any provision of Federal or State law"— such as Clean Air Act section 209 preemption—"from carrying out such implementation plan."[68] The incorporation of these state standards into SIPs means they remain enforceable, not only as a matter of state law, but also federal law.[69]

For example, the California SIP, 40 CFR 52.220a(c), identifies the "EPA-approved regulations" that are part of the SIP as including the "'LEV III' exhaust emission standards for *2015 and subsequent model year* [passenger cars, light duty trucks, and medium duty vehicles]" as well as the "[e]xhaust emissions standards for new *2004 and subsequent model* heavy-duty diesel engines . . . ."[70] Other states have also adopted California's standards pursuant to section 177. For example, Maine adopted LEV III and certain pre-Omnibus standards,[71] including as those standards apply to "subsequent model years,"[72] and those standards remain incorporated into Maine's SIP.[73] The incorporation of these standards into SIPs demonstrates that they remain

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[68] 42 U.S.C. § 7410(a)(2)(E).
[69] *See* 42 U.S.C. §§ 7413, 7604(a), (f).
[70] *See also* 81 Fed. Reg. 39424 (approving these and other measures into the California SIP); 89 Fed. Reg. 82553 (proposed rule) (summarizing past SIP actions relating to the California mobile source program); EPA, *EPA-Approved Statewide Statutes and State Regulations in the California SIP*, https://www.epa.gov/air-quality-implementation-plans/california-statewide-statutes-regulations.
[71] *See* 06-096 C.M.R. ch. 127, § 1, available at https://www.law.cornell.edu/regulations/maine/06-096-C-M-R-ch-127-SS-1.
[72] *See, e.g.,* 06-096 C.M.R. ch. 127, § 7.A(3) ("Effective for *2015 and subsequent model years* (or 2014, for manufacturers choosing early compliance with the fleet average requirements in Section 1961.2), each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEV III phase-in requirements for passenger cars, light-duty trucks, and medium-duty vehicles, and may earn and bank NMOG + NOx credits or VECS as applicable, all in accordance with Title 13, *California Code of Regulations*, Section 1961.2.") (emphasis added).
[73] *See* 82 Fed. Reg. 42233 (final rule); 82 Fed. Reg. 28611 (proposed rule) (explaining the scope of Maine's program, including its adoption of the "LEV III standards [that] apply to 2015 and subsequent model year vehicles" and various heavy-duty requirements); 40 CFR 52.1020 (identifying "EPA approved regulations" in Maine's SIP, including "LEV II GHG and ZEV provisions, and Advanced Clean Cars program (LEV III, updated GHG and ZEV standards).").

enforceable and that the scope of their preemption waivers continues into subsequent model years.

Further, California and other states have relied on these programs to meet long-term SIP emissions goals, which only makes sense if the standards remain enforceable in subsequent model years. For example, EPA has observed that California has relied on the ACC I program—which includes LEV III—"to meet short- and long-term emission reduction goals."[74] The same is true of the section 177 states that adopted ACC I.[75] These goals include the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), which impose ongoing air quality requirements that states must meet under the Clean Air Act.

To support the development of SIPs and transportation conformity determinations, California also relies on emissions modeling that incorporates the continued effect of its mobile source standards, including LEV III and pre-Omnibus provisions. EPA has approved the use of the California EMFAC (short for EMission FACtor) model for estimating emissions inventories.[76] The latest EMFAC model to receive EPA approval, EMFAC2021, adopted emission factors that accounted for the state standards in effect at the time, including standards that had received a waiver (like LEV III and pre-Omnibus rules) as well as standards that had not yet received a waiver at the time (like ACT and Omnibus). In its November 2022 approval of the EMFAC2021 model, EPA observed that the relevant emission factors for future SIP approvals pertained only to state rules that have received a waiver of preemption and were thus enforceable by the state.[77] In other words, EPA recognized that the LEV III and pre-Omnibus standards remained enforceable standards within California, despite the existence of later adopted standards such as Omnibus.

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[74] 87 Fed. Reg. 14350.

[75] *Id.* at n. 161 (collecting authorities such as Wisconsin Department of Natural Resources (Wisconsin), Docket No. EPA-HQ-OAR-2021-0257-0095 at 1 ("These standards provide important and necessary reductions in both GHG and criteria pollutant emissions needed to meet state and local air quality goals and address federal CAA requirements."); Connecticut at 2 ("These programs enable long-term planning and yield critical emission reductions that are critical to meeting Connecticut's climate goals as well as our statutory obligations to reach attainment with the ozone NAAQs."); Delaware 2 ("Delaware adopted the California LEV regulation and incorporated the LEV and GHG standards into the State Implementation Plan. . . . Delaware will not meet air quality goals without more protective vehicle emission standards."); Maine at 1 ("[T]he LEV program was initially created to help attain and maintain the health-based National Ambient Air Quality Standards (NAAQS) . . . The California ZEV and GHG programs enable long-term planning for both the states and the regulated community and have been drivers of technological change across the industry.")).

[76] *See* 87 Fed. Reg. 68483.

[77] *See* 87 Fed. Reg. at 68486/3-87/1.

C. CARB's later adoption of new programs such as ACC II and Omnibus did not limit the applicability of prior waiver decisions.

Later CARB rules—particularly LEV IV and Omnibus—built on the LEV III and the pre-Omnibus programs, retaining certain aspects of the earlier programs while strengthening other aspects.[78] In other words, after promulgating LEV IV and Omnibus, CARB has continued to implement and enforce certain LEV III and pre-Omnibus provisions. These include both in-use requirements for vehicles certified to LEV III and pre-Omnibus standards, as well as requirements for new vehicles that remain unchanged, such as the LEV III greenhouse gas emission standards. CARB's continued implementation and enforcement of these provisions confirm that the relevant preemption waivers remain extant.

Even regarding the provisions that the LEV IV and Omnibus programs strengthened—for example, more stringent criteria pollutant standards—nothing indicates that CARB strengthening these standards somehow modifies the scope of prior federal preemption waivers. Indeed, CARB could not unilaterally alter a prior waiver decision at all, since a waiver requires both a submission by CARB and an adjudication by EPA.[79] *A fortiori*, nothing in the Clean Air Act grants CARB unilateral authority to administratively render one part of a federal waiver ineffective by strengthening the relevant state regulations.

EPA has also concluded that subsequent state law developments do not alter the scope of prior federal waivers. For example, after the original ACC I waiver was granted in 2013, CARB made certain changes to its regulatory program. EPA also withdrew a portion of the waiver,[80] which it later restored in full. In the 2022 restoration action, EPA noted certain state law regulatory developments following the original waiver, and concluded that "[t]he consequence of [EPA's waiver] action is the reinstatement of the ACC I program waiver issued in 2013 and does not extend to other regulatory developments in California or by EPA that occurred subsequent to that waiver decision."[81] In other words, while intervening CARB actions may have affected state law requirements, those did not affect the scope of EPA's earlier waiver, which EPA restored in full.

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[78] For example, much of the LEV III program remained in place even following CARB's adoption of ACC II. Besides CARB's retention of the LEV III GHG program, CARB also retained significant aspects of the criteria pollutant program, including the 0.030g/mile NMOG+NOx fleet average, the basic bin structure for NMOG+NOx compliance, the continued use of existing test cycles (e.g., FTP, SFTP/U06), the general certification program architecture (e.g., compliance credits, additional small volume manufacturer flexibilities, etc.), and the general scheme for warranties. While aspects of these provisions may have been strengthened by LEV IV, the basic conceptual framework and significant regulatory text often remained in place.

[79] Similarly, for example, while CARB could adjust State rules relating to air quality, it could not unilaterally revise the text in the Federal CFR relating to the California SIP.

[80] In 2019, EPA withdrew the portions of the waiver relating to GHG and ZEV but did not withdraw the waiver for LEV III criteria pollutant standards. *See* 84 Fed. Reg. 51310; 87 Fed. Reg.14333 n.4.

[81] 87 Fed. Reg.14378 n.481.

While EPA has claimed the power to reconsider prior exemption waivers, here the agency has not reconsidered any of the relevant waivers.[82] Assuming such reconsideration authority exists, it may be theoretically possible that EPA could later limit the scope of an earlier waiver, pursuant to the criteria and processes described above. However, EPA has never reconsidered its prior waivers for the LEV III criteria pollution standards or its pre-Omnibus programs. As such, even were it possible for EPA to limit the scope of the LEV III and pre-Omnibus waivers, EPA has not done so.[83] And while EPA's comment letter on the emergency regulation opines generally on the applicability of past waivers, it does not constitute a reconsideration of past waivers or purport to do so.[84] Nor do other subsequent federal actions affect the scope of the earlier LEV III and pre-Omnibus waivers. While, EPA later granted waivers for the ACC II, ACT, and Omnibus programs, none of these waiver actions purported to reconsider or otherwise limit the effectiveness of earlier waivers.[85] Relatedly, Congress's resolutions disapproving waivers for ACC II, ACT, and Omnibus[86] did not purport to affect waivers for LEV III or pre-Omnibus programs.

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[82] Indeed, EPA has interpreted the Act to confer only limited authority to reconsider prior waivers. EPA has explained that such inherent authority to reconsider a waiver decision is constrained by the three waiver criteria in section 209(b), and furthermore that it may only reconsider a previously granted waiver to address a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. Under EPA's interpretation, even when the agency acting within the appropriate bounds of its authority to reconsider, it should still exercise its limited authority within a reasonable timeframe and be mindful of reliance interests. *See* 87 Fed. Reg. at 14344.

[83] The Clean Air Act does not state that EPA has authority to reconsider past waiver actions. But even assuming EPA possesses such authority consistent with the agency's prior interpretations, see 87 Fed. Reg. at 1344, significant obstacles exist to EPA's reconsideration of these specific earlier waivers, including the fact that regulated entities have already complied with LEV III and pre-Omnibus requirements, in some cases for over a decade. As such, we do not believe the factual and legal predicates for reconsideration of the LEV III and pre-Omnibus waivers could be satisfied at this time, such that any new reconsideration by EPA would be arbitrary and capricious and contrary to law.

[84] Nor would EPA's comment letter comply with the statutory notice and comment processes for reconsidering waivers, make the requisite statutory findings, address reliance interests, or otherwise demonstrate awareness of, much less comply with, the agency's own views of the requisite processes and criteria for waiver reconsideration.

[85] To the extent later waivers discuss earlier waivers, that discussion tends to demonstrate the waivers are complementary. *See, e.g.,* ACC II Decision Document 40 n. 96 ("EPA's review of CARB's protectiveness determination made in the context of ACC I, including CARB's GHG regulations, is not undermined by CARB's ACC II regulations.").

[86] As California notes in its proposed rule, the validity of these actions is subject to litigation. *See* SISOR at 5. To the extent the later waivers were legally disapproved by Congress, that further confirms that they could not have in any way limited the scope of the earlier waivers.

In sum, the preemption waivers for the LEV III and pre-Omnibus provisions remain valid, including for subsequent model years.

III. The EVE Regulations do not require a waiver.

CARB's proposal to permanently adopt the EVE Regulations does not impose new substantive requirements or standards, thus obviating the need for a new waiver. Adverse commenters on the emergency regulation argue to the contrary, suggesting for instance that "because CARB added these standards as new sections in the California Code of Regulations, changed the language of the emissions standards, and merged the old standards together in a new way, it cannot rely on those prior waivers."[87] The same commenter alleges that the "entire structure of the [EVE] Regulation demonstrates why these emission standards are new" because "CARB proposes an assemblage of emission standards . . . with waivers granted at separate times."[88] Other commenters also claim that CARB's proposed provisions are internally incompatible,[89] or that they adopt new substantive provisions that were not previously waived.[90] These assertions are inaccurate and should be disregarded.

First, as to light-duty vehicles, the EVE Regulations simply require manufacturers to meet for the 2026 and later model years the 2025 ACC I tailpipe standards that have long been in place.[91] Manufacturers have had ample time to put the technology in place to meet the 2025 ACC I tailpipe standards. EPA's 2013 waiver for the ACC I rule applied to "2015 and subsequent" model years; that waiver did not expire, has not been rescinded, and was not addressed by the congressional resolutions. And while the ACC II rule amended the ACC I requirement to read "2015 through 2025," the EVE Regulations do not add anything new and therefore do not require either a new waiver or an in-the-scope approval. As EPA explained long ago, "[o]nce California receives a waiver …, it need only" obtain a new waiver "when it adopts new or different standards or accompanying enforcement procedures."[92] Here, no waiver is needed because CARB is merely clarifying that previously waived standards for subsequent model years continue to remain in effect that same time period.[93]

Second, as to heavy-duty vehicles and engines, industry commenters incorrectly assert that the EVE Regulations do more than simply reverse the regulatory changes and California Code of Regulations additions effectuated through the Omnibus rulemaking. For example, the Truck and Engine Manufacturers Association reprint a table from the final Omnibus rule on

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[87] Daimler Comment at 2.
[88] *Id.*
[89] *See, e.g.,* Alliance Comment at 12-13.
[90] WSPA Comment at 5.
[91] *See*, Appendix A-2-2 at 14, et seq.
[92] 43 Fed. Reg. 36679, 36680 (Aug. 18, 1978).
[93] EPA has also affirmed that a new waiver was not needed to extend previously approved standards to *additional model years*. 42 Fed. Reg. 1503, 1504 (Jan. 7, 1977). While CARB is merely clarifying previously waived standards here as opposed to extending prior standards into new model years, this EPA decision further supports the fact that no waiver is needed here.

Exhaust Emission Standards to support their assertion that "the [EVE] Regulation does not simply 'undo' those Omnibus-implemented strike-outs to restore the prior version."[94] But the table in the October 2, 2025 version of Appendix A-2-1-1, part 1, refutes that assertion.

Compare:

Exhaust Emission Standards for 2004 ~~and Subsequent~~Through 2023 Model Heavy-Duty Engines, and Optional, Reduced Emission Standards for 2002 ~~and Subsequent~~Through 2023 Model Heavy-Duty Engines Produced Beginning October 1, 2002, Other than Urban Bus Model-Year Engines Produced From October 1, 2002 Through 2006[L]
(grams per brake horsepower-hour [g/bhp-hr])

Model Year	*Oxides of Nitrogen Plus Non-methane Hydrocarbons*	*Optional Oxides of Nitrogen Plus Non-methane Hydrocarbons*	*Oxides of Nitrogen*	*Optional Oxides of Nitrogen*	*Non-methane hydrocarbons*	*Carbon Monoxide*	*Particulates*
2004-2006[H]	2.4[A,C,E,J]	2.5[B,C,E,J]	n/a		n/a	15.5	0.10[C]
October 1, 2002-2006	n/a	1. 8 to 0.3[A,D,F]	n/a		n/a	15.5	0.03 to 0.01[G]
2007 ~~and subsequent~~ 2023[M]	n/a	n/a	0.20[I]		0.14	15.5	0.01[K]
2015 ~~and Subsequent~~ 2021 (Optional)[N,O]	n/a	n/a	n/a	0.10, 0.05, or 0.02	0.14	15.5	0.01
2022-2023 (Optional)[N,O]	n/a	n/a	n/a	0.10, 0.05, 0.02, or 0.01	0.14	15.5	0.01

With:

Exhaust Emission Standards for 2004 and Subsequent Model Heavy-Duty Engines, and Optional, Reduced Emission Standards for 2002 and Subsequent Model Heavy-Duty Engines Produced Beginning October 1, 2002, Other than Urban Bus Model-Year Engines Produced From October 1, 2002 Through 2006[L]
(grams per brake horsepower-hour [g/bhp-hr])

Model Year	*Oxides of Nitrogen Plus Non-methane Hydrocarbons*	*Optional Oxides of Nitrogen Plus Non-methane Hydrocarbons*	*Oxides of Nitrogen*	*Optional Oxides of Nitrogen*	*Non-methane Hydrocarbons*	*Carbon Monoxide*	*Particulates*
2004-2006[H]	2.4[A,C,E,J]	2.5[B,C,E,J]	n/a		n/a	15.5	0.10[C]
October 1, 2002-2006	n/a	1. 8 to 0.3[A,D,F]	n/a		n/a	15.5	0.03 to 0.01[G]
2007 and subsequent[M]	n/a	n/a	0.20[I]		0.14	15.5	0.01[K]
2015 and Subsequent (Optional)[N,O]	n/a	n/a	n/a	0.10, 0.05, or 0.02	0.14	15.5	0.01

[94] Truck and Engine Manufacturers Association Comment at 4.

Furthermore, while it is true that the heavy- and medium-duty standards in effect prior to adoption of the Omnibus rule included components that CARB developed at different times, commenters are incorrect in asserting that the EVE Regulations cobbled together a new hybrid set of heavy- and medium-duty standards that never existed before. The heavy- and medium-duty provisions included in the EVE Regulations were all incorporated into CARB's heavy- and medium-duty program, as approved by EPA, as of November 7, 2016.[95]

EPA has previously found that "minor revisions" to make existing provisions "work more appropriately," "minor technical amendments," or changes that increase compliance flexibilities do not require a new waiver.[96] This is so even where CARB has made changes to its program "not considered at the time of its initial . . . program adoption" or where such "changes to the regulations are" "significant."[97] By contrast, a new waiver is generally required where CARB's regulatory amendments "constitute new or different standards or accompanying enforcement procedures, or if they change the basis for statutory determinations in previous waiver decisions."[98] That did not happen here. While CARB's proposed rulemaking would make changes to the regulatory text, these changes serve to restore programs that previously received waivers. The changes also confer additional compliance flexibility on regulated entities to comply with either the previously waived programs or with ACC II, ACT, and Omnibus. They thus constitute the kinds of revisions that do not necessitate a new waiver.

In short, the EVE Regulations do not introduce new standards, nor do the EVE Regulations combine pre-existing standards in a way that effectively creates a new standard. Accordingly, no new waiver is required.

IV. CARB does not require a within-the-scope determination to implement and enforce previously waived standards.

As explained above, because CARB's proposal to permanently adopt the EVE Regulations seeks to clarify that provisions that already received waivers remain in place, CARB does not require a new waiver from EPA. Furthermore, a within-the-scope determination from EPA is not required here. A within-the-scope analysis is used only to determine whether California's new or amended vehicle emission standards go beyond the bounds of an existing EPA waiver. Here, because CARB's proposal merely clarifies and continues standards that EPA already approved and waived, there is no new regulatory substance to evaluate.

Some adverse commenters on the emergency rulemaking erroneously argue that at minimum a within-the-scope determination (or alternatively, a new waiver) by EPA is

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[95] *See* CARB 5-Day Notice at 5, footnotes 7 & 9; https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/emergencyvehemissions/notice.pdf
[96] 2006 ZEV Waiver at 18, 20.
[97] *Id.* at 18.
[98] 44 Fed. Reg. 61096; *see also* 37 Fed. Reg. 14831 (concluding that CARB's new regulatory amendment did not require a new waiver because it "exists within the meaning and intent of the waiver granted" previously).

mandatory.[99] These commenters generally point to the fact that CARB has sometimes sought within-the-scope determinations from EPA. But that CARB has opted to do so in the past does not shed light on whether such a determination is legally required. It is not. The CAA does not mention, much less require, within-the-scope determinations.[100] Rather, EPA developed this mechanism as an expedited method to confirm the enforceability of CARB's regulations where CARB made only minor revisions or added compliance flexibilities.[101] However, EPA has never required a within-the-scope determination, whether in its regulations or in prior within-the-scope decisions. To the contrary, EPA has concluded that a within-the-scope determination is not required. In a 1999 letter, which in turn quoted a 1992 letter from then-Administrator Reilly to House Energy and Commerce Chairman John Dingell, EPA stated:

> It is not necessary for California to seek a within-the-scope determination from EPA. California could choose to enforce a statutory provision or regulation for which it had not explicitly received a waiver, but if the regulation is beyond the scope of an existing waiver, California would risk the loss of an enforcement action against manufacturers who challenged the applicability of an existing waiver to the new regulation. Therefore, California often requests confirmation of its position that the new regulations are within the scope of an existing waiver.[102]

EPA's prior position makes sense: if the CARB program is already covered by an existing waiver (as is the case here), the statutory requirements in section 209(b) are satisfied, and preemption is waived. The law requires nothing more. Accordingly, any within-the-scope determination would be merely confirmatory, not legally required.

V. Though not a necessary determination, the EVE Regulations fall within-the-scope of prior waivers.

Although a within-the-scope determination is not required, the EVE Regulations *do* fall within-the-scope of prior EPA waivers. EPA considers regulations to be within-the-scope of previously granted waivers if they: (1) do not undermine CARB's determination that its standards are as protective as the applicable federal standards, (2) do not impact consistency with section 202(a) of the Clean Air Act, and (3) do not raise new issues that would affect EPA's previous waiver decisions. CARB's EVE Regulations meet those standards.

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[99] *See, e.g.,* Alliance Comment at 13-14; WSPA Comment at 4-5.
[100] *See* 42 U.S.C. § 7543.
[101] *See* 2006 ZEV Waiver Decision 17-20 (describing the purpose of and criteria for within-the-scope determinations).
[102] Letter from Gregory A. Green, Director, EPA Vehicle Programs and Compliance Division to Mac S. Dunaway, at 3 (Nov. 22, 1999) (citing Letter from William K. Reilly, EPA Administrator, to Hon. John D. Dingell, Chairman, Subcommittee on Oversight & Investigation, Committee on Energy & Commerce, at 2 (July 29, 1991).

A. The EVE Regulations do not undermine CARB's determination that its standards are as protective as applicable federal standards.

The Clean Air Act does not require California's vehicle emissions standards to be more stringent than EPA's vehicle emissions standards on every pollutant or for every model year. Since the 1977 Clean Air Act Amendments, California need only demonstrate that its standards "in the aggregate" are at least as protective of public health and welfare as applicable federal standards.[103] The EVE Regulations do not undermine California's protectiveness determination.

Through the EVE Regulations, CARB clarifies that at minimum prior ACC I and LEV III protective standards remain in place.[104] As CARB announced in the MAC, it is giving manufacturers the option to choose to certify under either the criteria pollutant and greenhouse gas emissions portions of the ACC I program or the ACC II standards.[105] Without clarity that some California regulation is in place, manufacturers could lawfully certify vehicles under only the federal Tier 3 standards for 2026 and Tier 4 standards starting in 2027. However, given federal retreat from clean vehicle standards, California has no certainty that those federal regulations will remain in place.

The EVE Regulations, through the incorporation of LEV III as adopted in ACC I, remain more protective overall because the proposal (1) exceeds federal Tier 3 particulate standards and (2) bridges the temporal gap before EPA's Tier 4 standards take effect, ensuring continued enforceability under existing waivers. The EVE Regulations therefore sustain the level of public health protection California has historically achieved, consistent with its statutory mandate under Health & Safety Code § 39000 et seq. to protect air quality, public health, and welfare.

1. LEV III exceeds federal Tier 3 emissions standards.

While EPA's Tier 3 standards were designed to harmonize with California's LEV III program, the LEV III standards are more stringent in timing and effect.[106] LEV III began two model years earlier (2015, as opposed to EPA's 2017 start year), resulting in tens of thousands of tons of additional cumulative non-methane organic gas (NMOG) and NOx reductions statewide between 2015 and 2025.[107] California also required a 3 mg/mi particulate matter standard

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[103] *Motor & Equip. Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1110 (D.C. Cir. 1979).
[104] CARB, Notice at 6.
[105] *Id.*
[106] CARB, Notice at 8; S*ee,* U.S. EPA, Regulatory Announcement: EPA Sets Tier 3 Motor Vehicle Emission and Fuel Standards at 4, https://nepis.epa.gov/Exe/ZyPDF.cgi/P100HVZV.PDF?Dockey=P100HVZV.pdf.
[107] CARB, ISOR: Proposed Amendments to new Passenger Motor Vehicle GHG Emission Standards for Model Years 2017-2025 to Permit Compliance Based on Federal GHG Emission Standards and Additional Minor Revisions to the LEV III and ZEV Regulations (Sep. 14, 2012), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2012/leviiidtc12/dtcisor.pdf?utm_source=chatgpt.com (CARB's analysis lists cumulative statewide NMOG and NOx reductions for the 2015-2025 calendar-year period comparing the LEV III scenario to the federal Tier 2 baseline.

beginning in 2017, tightening further to 1 mg/mi by 2028, whereas EPA's Tier 3 standards permit an interim 6 mg/mi limit through 2027.[108] Moreover, CARB's enhanced durability and in-use testing provisions will yield additional NOx reductions through 2030.[109] As a result, LEV III standards are more protective than EPA's Tier 3 program in the aggregate.

CARB's analysis in prior rulemaking—incorporated into the notice and SISOR—has repeatedly noted the benefits of LEV III on particulate emissions especially in already overburdened communities. Moreover, without LEV III, California's air quality would worsen in the interim period before EPA's Tier 4 standards fully phase in, particularly in PM2.5 impacted regions like the South Coast and San Joaquin Valley.

2. LEV III ensures regulatory continuity for emissions standards in California.

EPA's adoption of new Tier 4 standards for 2027 and later model years does not render the EVE Regulations unnecessary, as several manufacturers wrongly assert.[110] While Tier 4 standards are more stringent than LEV III once fully phased in, Tier 4 standards are not yet effective, will not be fully phased in until 2033; in any event, some of the same manufacturers are currently seeking the reconsideration of Tier 4 criteria pollutant standards. Indeed, on August 1, 2025, EPA published a notice of reconsideration and proposed repeal of its greenhouse gas emission standards for light-, medium-, and heavy-duty vehicles.[111] EPA has also signaled its intention to reconsider the Tier 4 criteria pollutant rules.[112] In contrast, CARB's earlier LEV III

When Tier 3 was later finalized in 2014, EPA's modeling showed comparable long-term stringency but a two-year later phase-in.)

[108] CARB, LEV III ISOR at 176, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2012/leviiighg2012/levisor.pdf; U.S. EPA, Control of Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards; Final Rule, 79 Fed. Reg. 23414, 23476 (Apr. 28, 2014); U.S. EPA, Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards Final Rule, Regulatory Impact Analysis at ES-3, https://nepis.epa.gov/Exe/ZyPDF.cgi/P100ISWM.PDF?Dockey=P100ISWM.pdf.

[109] CARB, California's Advanced Clean Cars Midterm Review: Summary Report for the Technical Analysis of the Light Duty Vehicle Standards, https://ww2.arb.ca.gov/sites/default/files/2020-01/ACC%20MTR%20Summary_Ac.pdf.

[110] *See, e.g.,* Alliance Comment at 3 - 6; EMA Comments at 2, 6; International Motors, LLC Comment at 2.

[111] 90 Fed. Reg. 36288 (Aug. 1, 2025).

[112] *See* https://www.epa.gov/newsreleases/epa-announces-action-implement-potuss-termination-biden-harris-electric-vehicle ("U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced the agency will reconsider the Model Year 2027 and Later Light-Duty and Medium-Duty Vehicles regulation and Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles."); *id.* ("Additionally, EPA is reevaluating the other parts of the Biden EPA's problematic "Clean Trucks Plan." This includes the 2022 Heavy-Duty Nitrous Oxide (NOx) rule, that results in significant costs that will make the products our trucks deliver, like food and other household goods, more expensive.").

and pre-Omnibus standards remain backed by valid preemption waivers and form a reliable baseline to protect Californians' health.

Manufacturers' reliance on federal standards cannot substitute for enforceable state requirements today. California cannot afford a multi-year pause in progress. Transportation remains the largest source of health-damaging pollution in the state, responsible for nearly 80% of NOx emissions and 90% of diesel particulate matter pollution.[113] As CARB notes, the South Coast and San Joaquin Valley air basins remain in "extreme" nonattainment of federal ozone standards and experience some of the nation's highest PM2.5 levels.[114] These pollution burdens will result in devastating consequences for communities near ports, railyards, highways, and warehouses who already experience higher rates of asthma, cardiovascular disease, cancer, and other health harms.

Suggestions that federal Tier 3 or Tier 4 standards alone are sufficient ignore both California's ongoing nonattainment status and the state's statutory obligations under its SIP. Indeed, the Clean Air Act's waiver provision is meant to "afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare,"[115] such that California need not rely solely on federal standards to address pollution in the state. CARB's restoration of previously waived standards through the EVE Regulations ensures that vehicles sold in California will continue to contribute to the attainment of federal and state ambient air quality standards and provide life-saving protections for California residents, and for residents of Section 177 states that have adopted these standards.

B. The EVE Regulations are consistent with section 202(a) requirements.

The EVE Regulations also fall within-the-scope of prior waivers because they remain consistent with section 202(a) of the Clean Air Act. Comments from manufacturers asserting that CARB could not satisfy the "lead time" requirement in section 209 of the Act are misplaced. Specifically, manufacturers contend that section 202(a)(3)(C) of the Act requires CARB to provide 4 years of lead time and 3 years of stability.[116] Even if CARB had to obtain a new waiver or a within-the-scope determination, which it does not, this argument fails.

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[113] California Energy Commission, *Transforming Transportation*, https://www.energy.ca.gov/about/core-responsibility-fact-sheets/transforming-transportation.
[114] CARB, SISOR at 7.
[115] H.R. Rep. No. 294, 95th Cong., 1st Sess. 301-02 (1977), cited in *Motor and Equipment Manufacturers Ass'n* v. *EPA (MEMA I),* 627 F.2d 1095, 1110 (D.C. Cir. 1979).
[116] *See* 42 U.S.C. §§ 7543(b)(1)(C) (EPA may deny a waiver only if EPA finds that, *inter alia*, "such State standards and accompanying enforcement procedures are not consistent with section [202(a)]" of the Act), 7521(a)(3)(C) (" Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.").

Notably, EPA rejected this same argument when EPA granted California a waiver for the Omnibus regulation.[117] EPA explained section 209(b)(1)(c) does not require California regulations to provide 4 years of lead time and 3 years of stability, like section 202(a)(3)(C) (which governs EPA heavy-duty regulations). Statutory purpose, legislative history, case law, and EPA's past waiver practice support EPA's longtime interpretation that the criteria is "whether CARB's standards are technologically feasible, within the lead time provided by CARB and giving consideration to cost."[118]

While some adverse comments vaguely raise arguments that CARB's standards are technically infeasible, no commenter claims that it cannot meet the standards or provides any evidence or information showing that the standards are technically infeasible. Indeed, manufacturers have already met these standards in the past, providing compelling empirical evidence of their feasibility. And, even if this argument that the Act requires California standards to provide 4 years of lead time is correct, manufacturers have had more than sufficient notice since the regulations at issue were adopted more than four years ago.

C. The EVE Regulations do not raise new issues.

Furthermore, past EPA waiver decisions confirm that CARB's action here – clarifying the continued effectiveness of previously waived standards and recodifying those standards into the regulations – does not raise "new issues" that could implicate the need for a within the scope confirmation.[119] Nor is CARB regulating new entities, increasing stringency, or otherwise imposing entirely new substantive requirements, which could be viewed as new issues requiring new authorization.[120] And while EPA has strengthened certain federal emission standards since

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[117] California Omnibus Waiver EPA Decision Document, EPA-420-R-24-028 (Dec. 2024) at 56-90 ("EPA Omnibus Decision"), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101DB1C.pdf; *see also* 90 Fed. Reg. 643 (Jan. 6, 2025).

[118] EPA Omnibus Decision at 52.

[119] *See* 75 Fed. Reg. 8056, 8061 (Feb. 23, 2010) ("Indeed, the mere re-codification of previously authorized standards that does not increase numerical stringency does not raise any new issues that affect EPA's prior authorization."); *see also* 78 Fed. Reg. 38974 ("A relaxation of compliance requirements and a clarification of operational useful life of TRU flexibility engines are not new issues that substantively affect the previously granted authorization, and are consistent with the purpose and intent of the TRU ATCM and its previously granted authorization.").

[120] *See* 2006 ZEV Waiver at 60-61. (If the amendments had increased the relatively stringency of the standards upon the manufacturers, or if the amendments had regulated or subjected new types of vehicles to be included in the ZEV program, or added additional pollutants to the program then likely new issues would have been created.); *see also* 75 Fed. Reg. 8061 nn.41-42 (similar and citing 50 FR 20126 at 20127 (May 14, 1985) ("[B]y extending California's standards and test procedures to vehicles not previously covered, these amendments do raise significant new issues not considered in prior waiver decisions.")

the LEV III/pre-Omnibus waivers, EPA has not adopted emission standards for a new industry for the first time, which could potentially create "new issues."[121]

VI. The EVE Regulations do not raise retroactivity, due process, or fairness concerns.

CARB explains that while it is proposing to amend its regulations to clarify that the LEV III requirements (adopted as part of ACC I) remain operative, it will also "continue[] to accept and process certification applications" for the LEV IV requirements (adopted as part of ACC II).[122] Therefore, "[r]egulated parties may choose to follow either" set of standards.[123] CARB notes, however, "that [it] may enforce the more recently adopted LEV IV requirements (adopted as part of ACC II) to the extent permitted by law, in the event a court of law holds invalid the resolution purporting to disapprove that waiver" and explains that "[r]egulated parties . . . assume the risk if they choose to certify only to the antecedent provisions, and the congressional resolutions disapproving the waivers of federal preemption under the Clean Air Act are declared invalid."[124] Some comments from representatives of the auto industry argue that this portion of the EVE Regulations raises concerns about retroactivity, due process, and fairness. Those arguments are misplaced.

To begin, nothing in the EVE Regulations raises retroactivity concerns. This is not a case in which an agency has promulgated a new rule that purports to apply to events that took place prior to the date of the rule's promulgation.[125] Here, CARB approved the ACC II standards on August 25, 2022, with an effective date of November 30, 2022. The ACC II standards apply beginning in model year 2026. The EVE Regulations do not change the effective date of the ACC II requirements to begin any earlier than originally set out. Nor is the effective date of the ACC II standards affected by the Congressional Review Act resolution presently impeding CARB's ability to enforce the ACC II requirements. If a court invalidates the congressional resolutions, the waiver will once again have legal effect, and CARB will be able to enforce the ACC II requirements based on that waiver. CARB's observation that it "may enforce" the ACC II

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[121] *See* 81 Fed. Reg. 78143, 78146 (Nov. 7, 2106). More generally, we note that changes potentially affecting protectiveness or consistency with section 202(a) do not qualify as "new issues," but instead are considered under those prongs of the analysis, which we have discussed above. 2006 ZEV Waiver 60 ("As previously noted, EPA examines any new and current information when reviewing whether CARB's amendments undermine CARB's previous protectiveness determination or affect the ZEV program's consistency with section 202(a). Such new information pertaining to those two issues is not considered to be 'new issues' with regard to the threshold question of whether new issues exist in order to subject the amendments to a new full waiver of federal preemption.")

[122] CARB, Notice of Proposed Rulemaking at 6.

[123] *Id.*

[124] *Id.*

[125] *Cf. Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 207 (1988) (invalidating a rule promulgated November 26, 1984, which would apply exclusively to a 15–month period commencing July 1, 1981); *Sierra Club v. Whitman*, 285 F.3d 63, 67 (D.C. Cir. 2002) (denying an agency's request to date the agency's determination May 15, 1997, although it actually made its determination on March 19, 2001).

requirements "to the extent permitted by law" in those circumstances is entirely reasonable and does not implicate retroactivity concerns in any way. Indeed, in pending litigation in the Eastern District of California, the court rejected manufacturers' retroactivity argument as to CARB's statement of intent to enforce the ACC II and Omnibus standards if/when it can.[126]

Nor do the EVE Regulations raise due process or fairness concerns. CARB has not failed to "give fair notice of conduct that is forbidden or required."[127] On the contrary, the Emergency Rule gives regulated entities clear notice that they may choose to comply with either the ACC I standards or the ACC II standards during the pendency of the litigation over the resolution purporting to invalidate the waiver for ACC II. Nor are any fairness concerns raised by CARB's statement that it "may enforce" the ACC II requirements "to the extent permitted by law" in the event a court holds invalid the resolution purporting to disapprove that waiver:. the EVE Regulations "merely state[] what . . . should have been assumed . . . all along—California intends to enforce" its ACC II requirements "if and when it can."[128]

VII. Conclusion

For the reasons discussed above, we support CARB's permanent adoption of the EVE Regulations. These regulations simply clarify that previously promulgated vehicle emission standards that already received waivers remain in effect. Because CARB's explicit intention is to clarify the continuing effect of provisions that were previously waived, its proposal does not need a new waiver, nor is a within-the-scope determination required. Even if EPA were to conduct such an analysis, the EVE Regulations would squarely fall within-the-scope of prior waivers because they are more protective than federal standards in the aggregate, conform with the Clean Air Act, and do not introduce any new issues.

CARB's adoption of the EVE Regulations is critical to maintaining clarity and consistency in vehicle emissions standards and to safeguarding California's authority to lead in advancing a zero-emission future. At a time of unprecedented federal and industry challenges to California's long-established authority, reaffirming these standards is essential to protect the health and welfare of Californians and residents of section 177 states which depend on them.

Sincerely,

/s/ Katrina Tomas
Katrina Tomas
Earthjustice

/s/ David Pettit
David Pettit
Center for Biological Diversity

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[126] *Daimler Truck North America, LLC v CARB*, E.D. Cal. Case No. 2:25-cv-02255-DC-AC (Oct. 31, 2025), Doc. No.94 at 27-28.
[127] *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).
[128] *Cent. Valley Chrysler-Jeep, Inc. v. Goldstene*, 563 F. Supp. 2d 1158, 1166 (E.D. Cal. 2008).

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Natural Resources Defense Council

November 10, 2025

Clerk's Office, California Air Resources Board
10001 I Street
Sacramento, California 95814

Via electronic submittal

RE: Comments on Emergency Amendment and Permanent Adoption of the Emergency Vehicle Emissions Regulations

Chair Sanchez and Members of the California Air Resources Board:

On behalf of the Center for Biological Diversity, Natural Resources Defense Council, Environmental Defense Fund, Clean Air Task Force, the Sierra Club, and Earthjustice, we respectfully submit the following list of references to accompany our comments in support of the California Air Resources Board's (CARB) Permanent Adoption of the Emergency Vehicle Emissions Regulations (EVE Regulations). **PDFs of the listed references are available for view and download at this Box.com link:**
https://diversity.box.com/s/xicm0ggl9bkypywhvphue1uvs5ycu483

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